

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

In re: Mortgage Foreclosure Cases) Misc. No. 11-mc-88-M

ORDER

As part of its efforts to manage the Mortgage Foreclosure docket, this Court drew on its inherent power to manage the litigation before it. It met with counsel for both sides, and over objection, stayed the litigation and appointed Merrill Sherman as Special Master pursuant to Rule 53 of the Federal Rules of Civil Procedure. *Marquis v. F.D.I.C.*, 965 F.2d 1148, 1154 (1st Cir. 1992). This power also allows the Court to sanction abuses of the judicial process. *In re Villa Marina Yacht Harbor, Inc.*, 984 F.2d 546, 548 (1st Cir. 1993) (citations omitted).

Since her appointment, Special Master Merrill Sherman has culled pertinent information from hundreds of cases filed in this District Court, with the cooperation of Plaintiffs' and Defendants' counsel has received additional personal and financial information from the parties, and categorized those cases in order to prioritize them for settlement. Ms. Sherman has conducted weeks of successful settlement conferences with the parties. Ms. Sherman, through the Amended Order, has billed the Plaintiffs who were not currently paying to live in the disputed properties Use and Occupancy Fees (U&O Fees), collecting monies for the Defendant lenders for the first time in years, in most cases. Ms. Sherman has established relationships with counsel for both sides and has communicated with them individually and in groups, spending time answering their questions, addressing their apprehension with the process, and always leaving her door and phone lines open to hear from them about future concerns.

Based on her efforts in evaluating certain cases and working them up for settlement, the Special Master has made disposition recommendations to the Court, upon which the Court has acted. The most recent recommendation (ECF No. 1430) urges dismissal of a fifty-five cases for failure to pay retainer and/or U&O Fees. The Court issued a Show Cause Order (ECF No. 1435), permitting Plaintiffs to respond to the Special Master's recommendation of dismissal. The Court has reviewed those recommendations and, when available, Plaintiffs' show cause responses.

The Court ORDERS as follows:

1. Because the following Plaintiffs failed to respond to the show cause order, these cases are hereby DISMISSED without prejudice.

- a. 11-318 Vargas v. MERS
- b. 12-243 Mota v. MERS
- c. 12-255 Lima v. Suntrust Mortgage

2. The following Plaintiffs responded to the show cause order by alleging that they no longer live in the property and therefore should not have to pay U&O Fees. The U&O Fees are not only imposed because the Plaintiff actually lives in the property. They are also imposed because the Defendants are required to make tax and insurance payments, but are denied access to and ownership of the property as a result of the litigation and stay. U&O fees must be paid by all participants in the Mortgage Foreclosure Docket in this District. *Villa Marina Yacht Harbor*, 984 F.2d at 548. Because the U&O fees were not paid, the following cases are hereby DISMISSED without prejudice:

- a. 12-083 Koutros v. Deutsche Bank
- b. 12-100 Ferraro v. MERS
- c. 12-109 Cardoza v. MERS
- d. 12-170 Healy v. Wells Fargo
- e. 12-213 Iannuccilli v. MERS
- f. 12-220 Altera v. MERS
- g. 12-234 Iacobucci v. MERS
- h. 12-263 Withrow v. Argent Mortgage
- i. 12-265 Chery v. MERS
- j. 12-271 Franco v. MERS
- k. 12-277 Estate of Reinaldo J. Leon v. Option One Mortgage

- l. 12-322 Santos v. Option One Mortgage
- m. 12-347 Gesualdi v. MERS
- n. 12-412 DiZoglio v. MERS
- o. 12-501 Cole v. MERS

3. The following Plaintiffs allege in their response that they are trying to find the resources to make the U&O payments. Because the Court ordered the payments many months ago, and these Plaintiffs have neither filed a request seeking relief for a specific reason, nor made the ordered payments, the following cases are hereby DISMISSED without prejudice.

- a. 11-544 Joseph v. MERS
- b. 12-010 Kitson v. Option One Mortgage
- c. 12-099 Zompa v. MERS
- d. 12-242 Batista v. MERS

4. The Court has received responses to its show cause order in the following cases, and finds them without merit. Those cases are DISMISSED without prejudice:

- a. 11-427 Akalarian v. American Home Mortgage (objection to the process)
- b. 11-427 Gray v. American Home Mortgage (objection to the process)
- c. 12-119 Federal National Mortgage v. Silverman (unable to make payment)
- d. 12-163 Vassilopoulos v. MERS (attempting to make payments)
- e. 12-180 Sunderland v. Rose Mortgage (objection to the process)
- f. 12-253 Keefe v. RBS Citizens (cannot locate Plaintiff)

5. The Special Master has filed a Supplemental Recommendation (ECF No. 1583) urging that the show cause order in the following cases should be extended because there were settlement discussions underway (or soon to be underway). The following cases are ORDERED to show cause why their cases should not be dismissed for failing to make payment no later than February 11, 2013.

- a. 11-503 Richter v. MERS
- b. 12-488 Hammond v. MERS
- c. 12-493 Gallagher v. MERS

6. The Court has been notified that the following cases were settled. No dismissal stipulations have yet been filed. The date to show cause why these cases should not be dismissed is extended to January 21, 2013.

- a. 11-316 Jacques v. New Century Mortgage

- b. 11-433 DaRosa v. MERS
- c. 11-609 Vargas v. MERS
- d. 12-011 Nardolillo v. MERS
- e. 12-056 Balasco v. MERS
- f. 12-209 Brown v. Wells Fargo Bank
- g. 12-117 Kafaru v. MERS
- h. 12-137 Sperduti v. MERS
- i. 12-237 Hawes v. Mortgage Lenders Network
- j. 12-315 Folgo v. MERS

7. The following Plaintiffs have alleged that they have in fact made the ordered payments. The Special Master does not have any record of such payments. The following cases are hereby DISMISSED without prejudice without further notice or action by the Court unless a proof of full payment is received by the Special Master by December 28, 2012.

- a. 12-217 Polanco v. MERS
- b. 12-229 Rosa v. MERS

8. Payment of the fees pursuant to the Court order has been made in the following cases, therefore cause has been shown and the following cases are NOT dismissed.

- a. 11-205 Lavergne v. Chase Home Finance
- b. 11-569 Greco v. Argent Mortgage
- c. 12-115 Patnaude v. MERS
- d. 12-200 Sauco v. Dana Capital Group
- e. 12-286 Ford v. Bank of New York Mellon
- f. 12-316 DiPrete v. MERS
- g. 12-317 Cline v. MERS
- h. 12-561 Sterling v. MERS

The Court reminds all parties that all ordered payments (including U&O fees and retainer payments) must be current, paid timely, and paid until final dismissal stipulations are filed with this Court (or the entry of a dismissal by the Court).

IT IS SO ORDERED:

A handwritten signature in black ink, appearing to read "John J. McConnell, Jr." The signature is fluid and cursive, with "John" on the first line and "J. McConnell, Jr." on the second line.

John J. McConnell, Jr.
United States District Judge

Dated: December 20, 2012